



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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Thibeault Corporation of New England
603 Old Mammoth Road
Londonderry, NH 03053

ADMINISTRATIVE ORDER
No. WD 02-42

Re Inkberry Rd., New Boston, NH
WPS File No. 5958
WT File No. 1999-02581

November 6, 2002

A. INTRODUCTION

This Administrative Order is issued by the New Hampshire Department of Environmental Services, Water Division, to Thibeault Corporation of New England pursuant to RSA 482-A:6 and RSA 485-A:17. This Administrative Order is effective upon issuance.

B. PARTIES

1. The New Hampshire Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Thibeault Corporation of New England is a New Hampshire corporation having a mailing address of 603 Old Mammoth Road, Londonderry, NH 03053.

C. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS:

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III provides that "failure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."

4. Pursuant to RSA 435-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.

5. Thibeault Corporation of New England ("Thibeault") is the owner of a parcel of land located at Inkberry Road, New Boston, NH, more specifically referenced on New Boston Tax Map 6, as Lot 41 (the "Property").

6. On December 20, 1999, DES issued Administrative Order No. WD 99-18 to Thibeault based on violations of RSA 485-A:17, Env-Ws 415, and Site Specific Permit No. WPS-5118 observed on the Property. On May 12, 2000, the Water Division issued a Notice of Proposed Administrative Fine to Thibeault for \$25,050 for violations of RSA 485-A, Site Specific Permit No. WPS-5118, Env-Ws 415, and Administrative Order No. WD 99-18. Violations observed on the Property included failure to stabilize areas within the required time, failure to perform construction on the Property in accordance with the approved plans, failure to install erosion controls as shown on the approved plans, water quality violations including turbidity increases in Byam Brook and the Piscataquog River violations of specific requirements of Administrative Order WD 99-18. On November 29, 2000, DES issued a Notice of Compliance and Release of Recordation to Thibeault for Administrative Order No. WD 99-18.

7. On August 2, 2001, DES issued Wetlands and Non-Site Specific Permit No. 1999-02581 (the "Wetlands Permit") to Thibeault for wetland impacts associated with the construction of a subdivision road ("Inkberry Road") to access 16 houselots part of a larger, existing subdivision on the Property. The Wetlands Permit authorized dredge and fill of 27,370 sq. ft. of palustrine forested/scrub-shrub wetlands with five (5) culvert crossings and a driveway crossing. Relevant conditions of the Wetlands Permit include the following:

a. Project Specific Condition 1 of the Wetlands Permit required that "all work shall be in accordance with plans by Eric C. Mitchell & Assoc., Inc. dated October 8, 1999 (rev.A update plans 3/5/01) and detail sheets dated March 8, 2001, as received by the Department on March 12, 2001."

b. Project Specific Condition 8 of the Wetlands Permit required that "orange construction fencing shall be placed at the limits of construction to prevent accidental encroachment on wetlands."

c. Project Specific Condition 9 of the Wetlands Permit required that "appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and shall remain until the area is stabilized."

d. Project Specific Condition 10 of the Wetlands Permit required that "within three days of final grading in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and

pinning on slopes steeper than 3:1.”

e. Project Specific Condition 12 of the Wetlands Permit required that “where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.”

f. Project Specific Condition 13 of the Wetlands Permit required that “proper headwalls shall be installed.”

g. Project Specific Condition 14 of the Wetlands Permit required that “culvert outlets shall be properly rip rapped.”

h. General Condition 1 of the Wetlands Permit required that “a copy of this permit shall be posted on site during construction in a prominent location visible to inspecting personnel.”

8. On July 25, 2001, DES issued Site Specific Permit No. WPS-5958 (the “Site Specific Permit”) to Thibeault for the construction of Inkberry Road. Relevant conditions of the Site Specific Permit include the following:

a. Condition 1 of the Site Specific Permit required that “water quality degradation shall not occur as a result of the project.”

b. Condition 2 of the Site Specific Permit required that “revised plans shall be submitted for permit amendment prior to any changes in construction details or sequences.”

c. Condition 5 of the Site Specific Permit required that **“by September 1, 2001, drainage easements must be established, and documentation of said easements provided to the Department, for all drainage structures (i.e. detention ponds, treatment swales)”** (emphasis in original).

d. Condition 4 of the Site Specific Permit required that “the approved plans and supporting documentation in the permit file are a part of this approval.”

9. The approved plans, dated October 8, 1999, as updated on March 5, 2001, and as received by DES Site Specific on July 17, 2001, (the “Plans”). The Plans, incorporated by reference into the Site Specific Permit under Condition 4 (see 8d above), include erosion control notes (the “Erosion Control Notes”) and a construction sequence (the “Construction Sequence”). Relevant provisions of the Erosion Control Notes and the Construction Sequence include the following:

a. The Erosion Control Notes, provided on Sheet 14 of 14 of the Plans, appear in relevant part as follows:

- i. Item 2 of the Erosion Control Notes states: "The intent of this project is to control sediment during new construction and grading. Roadway earthcuts and all exposed surfaces shall be stabilized immediately upon completion of work."
 - ii. Item 3 of the Erosion Control Notes states: "In order to prevent unnecessary erosion of newly graded road slopes and unnecessary siltation of drainageways, the contractor shall perform loaming, hydroseeding, and mulching as soon as he has satisfactorily completed a unit or portion of the project, such as embankments or cuts, a section of pavement or drainageways."
 - iii. Item 4 of the Erosion Control Notes states: "Hay mulch or other approved methods shall be used to control erosion of newly graded areas. All new cut and fill slopes shall be seeded and mulched within 72 hours after their construction."
 - iv. Item 6 of the Erosion Control Notes states: "The contractor shall provide a minimum of 4" of loam or topsoil and hydroseed all disturbed unpaved surfaces (and surfaces not designated for gravel or mulch) within the limit of work."
 - v. Item 8 of the Erosion Control Notes states: "The contractor shall inspect, clean, and properly maintain (including replacing as necessary) all erosion control measures daily during the project."
 - vi. Item 10 of the Erosion Control Notes states: "No disturbed area shall be left unprotected from erosion over the winter season. The winter season is hereby defined as the period from Nov. 1 to April 1. This shall not restrict work from taking place over the winter months, but the contractor/owner shall not allow an area greater than 5,000 sq. ft. to be left unprotected."
 - vii. Item 11 of the Erosion Control Notes states: "Silt fence shall be provided around all temporary stockpiles of material."
- b. Relevant provisions of the Construction Sequence, provided on Sheet 14 of 14 of the Plans, appear in relevant part as follows:
- i. Item 3 of the Construction Sequence requires all level spreaders and treatment swales to be constructed prior to grading the roadway (Item 4), constructing stormwater drain piping (Item 5), constructing sideline drainage swales (Item 6) and constructing individual residential driveways (Item 11). Item 3 of the Construction Sequence also specified that "Level spreaders and treatment swales shall be stabilized prior to directing water to them."
 - ii. Item 4 of the Construction Sequence required roadways to be graded to the top of subgrade elevation and all roadways to be stabilized immediately after grading.

iii. Item 6 of the Construction Sequence required excavation of sideline drainage swales along the roadway (where applicable) and drainage swales, sideslopes and all disturbed areas to be loamed and hydroseeded within 72 hours.

10. On July 23, 2002, DES personnel inspected the Property and observed the following:

- a. Orange construction fencing was not installed to prevent accidental encroachment into wetlands;
- b. Wetlands Permit was not posted.
- c. The road was cleared and was starting to be grubbed. Silt fences were installed and staked with haybales along the perimeter of the cleared roadway on either side.
- d. During the inspection DES personnel asked Don Courtemanche, project manager for Thibeault, to post the Wetlands Permit and install orange construction fencing at the limits of construction near wetlands on the Property.

11. On October 28, 2002, DES received a complaint from New Boston Town Administrator Burton Reynolds, New Boston Planning Coordinator Nic Strong, and New Boston Conservation Commission Chair Betsey Dodge that sediment-laden water was being discharged into the Piscataquog River from the Property on October 26, 2002. Attached to the complaint were photos showing the erosion of sediments off the Property and the plume of sediment resulting from this erosion in the Piscataquog River.

12. On October 30, 2002, DES personnel inspected the Property with members of the New Boston Conservation Commission, New Boston Planning Board and Thibeault in response to this complaint. During the inspection, DES personnel observed the following:

- a. An area greater than 100,000 sq. ft. including the road, roadway side slopes, earth cuts and stockpiles was disturbed and not stabilized. The roadway side slopes were greater than 3:1 and soils were not compacted. Inkberry Rd. and its associated side slopes showed evidence of severe erosion – deep ruts and rills were observed on the roadway and slopes and sediment had collected in pools at the base of slopes. A loam stockpile, located near house lot 41-43, was not stabilized or ringed with silt fence.
- b. Erosion controls were not maintained in numerous locations and were not sufficient to handle the erosion potential of the Property. Silt fences were installed at the toe of the disturbed slopes but were not sufficient to handle the erosion potential of the disturbed roadway and its associated side slopes. Previous rain events had left sediment of a depth of greater than 5 inches in a stream and its tributaries located north of Inkberry Rd. adjacent to the Byam property. Streams in this location discharge into the Piscataquog River. Sediment-laden water and sediment was pooled behind silt fence adjacent to streams north of Inkberry Rd. to approximately half of the fence height or greater.

c. Construction sequencing per the Plans had not been adhered to. Level spreaders were not constructed near treatment swale 300, drainage manhole 111, and treatment swale 500. Treatment swales 300 and 500 were not constructed at all and all other level spreaders and treatment swales were roughly laid out, but not vegetated or otherwise stabilized. All swales adjacent to Inkberry Rd. were also roughly constructed but were not rip-rapped as required by the Plans. No Culvert inlets and outlets were rip-rapped according to the Plans, nor were any culvert headwalls constructed. Stormwater was being directed into the unstabilized drainage structures.

d. Orange construction fencing had not been installed at the limits of construction on the Property and the Wetlands Permit had not been posted as requested by DES personnel during the inspection on July 23, 2002.

e. One residential driveway was constructed, stormwater drain piping was installed, and additional fill was being added to the eroding northeasterly side of Inkberry Road during the inspection.

13. On November 1, 2002, DES received a letter from Schauer Environmental Consultants, LLC, on behalf of Thibeault, indicating what steps will be taken immediately to address wetland impacts at and adjacent to the Property.

14. On November 1, 2002, DES received immediate action plans from Thibeault. The immediate action plans informed DES on the status of the Property and the proposed erosion control measures and actions.

15. RSA 485-A:13, states that it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface or groundwater of the state without first obtaining a permit from DES.

16. Sediment-laden water constitutes waste as defined under RSA 485-A

D. DETERMINATION OF VIOLATIONS

1. Thibeault has violated RSA 482-A:14, III, by failing to comply with Project Specific Condition 1 of the Wetlands Permit requiring that "all work shall be in accordance with plans by Eric C. Mitchell & Assoc., Inc. dated October 8, 1999 (rev.A update plans 3/5/01) and detail sheets dated March 8, 2001, as received by the Department on March 12, 2001."

2. Thibeault has violated RSA 482-A:14, III, by failing to comply with Project Specific Condition 8 of the Wetlands Permit requiring orange construction fencing to be placed at the limits of construction to prevent accidental encroachment on wetlands.

3. Thibeault has violated RSA 482-A:14, III, by failing to comply with Project Specific Condition 9 of the Wetlands Permit requiring appropriate siltation, erosion, and turbidity controls to be in place prior to construction, to be maintained during construction, and to

remain until the area is stabilized.

4. Thibeault has violated RSA 482-A:14, III, by failing to comply with Project Specific Condition 10 of the Wetlands Permit requiring all exposed soil areas to be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1 within three days of final grading in an area that is in or adjacent to wetlands or surface waters.

5. Thibeault has violated RSA 482-A:14, III, by failing to comply with Project Specific Condition 10 of the Wetlands Permit requiring stabilization by mulch and tack netting of all exposed areas in which construction activities have been temporarily suspended outside the growing season within 14 days and stabilization of all slopes steeper than 3:1 by matting and pinning.

6. Thibeault has violated RSA 482-A:14, III, by failing to comply with Project Specific Condition 13 of the Wetlands Permit requiring the installation of proper culvert headwalls.

7. Thibeault has violated RSA 482-A:14, III, by failing to comply with Project Specific Condition 14 of the Wetlands Permit requiring culvert outlets to be properly rip rapped.

8. Thibeault has violated RSA 482-A:12, by failing to post the Wetlands Permit on the Property.

9. Thibeault has violated RSA 482-A:3, I, by discharging sediment-laden water into the Piscataquog River.

10. Thibeault has violated RSA 482-A:3, I, and RSA 485-A:17 by failing to comply with Site Specific Permit Condition 1, requiring that water quality degradation shall not occur as a result of the project by filling a stream and its tributaries located north of Inkberry Road and south of the Piscataquog River.

11. Thibeault has violated RSA 485-A:17 by failing to comply with Site Specific Permit Condition 2 requiring that revised plans to be submitted for permit amendment prior to any changes in construction details or sequences.

12. Thibeault has violated RSA 485-A:17 by failing to comply with Site Specific Permit Condition 4 requiring all construction activities to be in accordance with the Plans including the Erosion Control Notes and Construction Sequence referenced on sheet 14 of 14 on the Plans.

13. Thibeault violated Item 2 of the Erosion Control Notes by failing to stabilize roadway earthcuts and exposed surfaces immediately upon completion of work.

14. Thibeault violated Item 3 of the Erosion Control Notes by failing to loam, hydroseed, and mulch slopes and drainageways as soon as satisfactory completion of a unit or portion of the project has been achieved.

15. Thibeault violated Item 4 of the Erosion Control Notes by failing to seed and mulch all new cut and fill slopes within 72 hours of construction.
16. Thibeault violated Item 6 of the Erosion Control Notes by failing to provide a minimum of 4" of loam or topsoil and hydroseed all disturbed unpaved surfaces (and surfaces not designated for gravel or mulch) within the limit of work.
17. Thibeault violated Item 8 of the Erosion Control Notes by failing to inspect, clean and properly maintain (including replacing as necessary) all erosion control measures daily during the project.
18. Thibeault violated Item 10 of the Erosion Control Notes by leaving an area greater than 5,000 sq. ft. unprotected going into the winter season (defined as between November 1 and April 1).
19. Thibeault violated Item 11 of the Erosion Control Notes by failing to provide silt fence around all temporary stockpiles of material.
20. Thibeault violated Item 3 of the Construction Sequence by failing to complete Item 3, requiring the construction of level spreaders and treatment swales prior to grading the roadway (Item 4), constructing stormwater drain piping (Item 5), constructing sideline drainage swales (Item 6) and constructing individual residential driveways (Item 11) and by failing to stabilize level spreaders and treatment swales shall be stabilized prior to directing water to them.
21. Thibeault violated Item 4 of the Construction Sequence by failing to stabilize roadways immediately after grading.
22. Thibeault violated Item 6 of the Construction Sequence by failing to loam and hydroseed all areas disturbed in the construction of drainage swales and side slopes within 72 hours.
23. Thibeault has violated RSA 485-A:17 by failing to comply with Site Specific Permit Condition 5 requiring drainage easements to be established, and documentation of said easements provided to the Department, for all drainage structures (i.e. detention ponds, treatment swales) by September 1, 2001.

E. ORDER

Based on the above findings, DES hereby orders Thibeault as follows:

1. **Immediately, cease and desist** all construction activities on the Property except for measures necessary to stabilize the site as specifically authorized by this Order.
2. **Immediately** retain a Certified Erosion Control Specialist to monitor the Property for compliance with this Order and the Wetlands and Site Specific Permits.

3. **Immediately** and in any event **no** later than November 12, 2002 stabilize all exposed soils with erosion control blankets. A maximum of 5,000 sq. ft. of area may remain exposed at any one time pursuant to the Site Specific Permit.
4. **Immediately** and in any event **no** later than November 12, 2002 construct stormwater drainage structures in accordance with plans authored by Eric C. Mitchell & Associates, Inc dated October 8, 1999 and revised March 5, 2001 and detail sheets dated March 8, 2001 as received by the Department on March 12, 2001.
5. **Immediately** and in any event **no** later than November 12, 2002 remove accumulated sediment by hand from all jurisdictional surface waters and wetlands, and drainage conveyance channels.
6. **Immediately** retain a Certified Wetlands Scientist ("CWS") to supervise the removal of sediment from and the restoration of impacted jurisdictional surface waters and wetland areas and to submit the restoration progress reports (described in 7e below) to DES.
7. Within 20 days of the date of this letter, submit a restoration plan for the restoration and/or mitigation of the impacted wetlands and surface waters to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and shall include:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions on the sites, with wetland boundaries and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
 - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
 - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration and mitigation areas;
 - d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date.
 - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on September 1, 2003 and September 1, 2004, by a CWS.
8. Retain a CWS to supervise the implementation of the restoration plan prepared in accordance with Item 7 (above).

9. Implement the restoration plan proposed in accordance with Item 7 (above) only after receiving written approval and as conditioned by DES.
10. **Immediately** retain a wetlands scientist or erosion control specialist to inspect the Property at least weekly and after every precipitation event to ensure that erosion control measures are functioning and effective. Submit reports of these inspections to DES within 3 days of each inspection.
11. **Immediately** post a copy of the Wetlands Permit on the Property as specified by RSA 482-A:12.
12. **Immediately** install orange construction fencing and repair silt fencing at the edge of all wetlands on the Property. Submit photos and written documentation of compliance with this requirement within 3 days of completion.
13. Submit photographs and written documentation of compliance with all aforementioned requirements and conditions **within five days of completion** unless otherwise specified.
14. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Mary Ann Tilton
DES Water Division, Wetlands Bureau
6 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095

F. APPEAL

Any person aggrieved by determinations D.1 through 10 of this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion.

Any person aggrieved by determinations D.11 through 13 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or on the internet at: <http://www.des.state.nh.us/desadmin.htm>.


Filing an appeal or motion for reconsideration of the Order will not automatically relieve Thibeault of its obligation to comply with the Order.

G. OTHER PROVISIONS

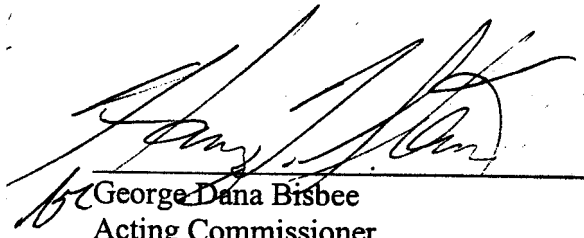
Please note that RSA 482:A, and RSA 485:A provide for administrative fines, civil

penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Thibeault remains obligated to comply with all applicable requirements. DES will continue to monitor the Project for compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director
Water Division



George Dana Bisbee
Acting Commissioner

Certified Mail/RRR: 7099 3400 0002 9772 6324

cc Mark Harbaugh, DES Legal Unit
Rene Pelletier, Manager, Land Resources Management Program
Public Information Officer, DES PIP Office
Mary Ann Tilton, Enforcement, DES Wetlands Bureau
Collis Adams, DES Wetlands Bureau
Ana Ford, Enforcement, DES Site Specific Program
Chris Helms, Environmental Division, AGO
Hillsborough County Registry of Deeds
Betsey Dodge, New Boston Conservation Commission
Nic Strong, New Boston Planning Board
Burton Reynolds, New Boston Town Administrator
New Boston Code Enforcement Officer